IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA.

RFA No. 133 of 2002

Date of Decision : September 5, 2007

Land Acquisition Collector …Appellant

Versus:

Om Parkash & others …Respondents

***Coram*:**

The Hon'ble Mr.Justice Sanjay Karol, Judge.

Whether approved for reporting? [1] *No*

For the appellant: Mr. Ashok Chaudhary, Addl. Advocate General.

For respondents 1 & 2: Mr. Rajiv Jeevan, Advocate.

Sanjay Karol, J. (Oral)

The present appeal arises out of the award dated 20.6.2001 passed in Land Reference Case No. 43 of 1997 titled as Om Parkash and others v. LAC, Kangra, enhancing the amount of compensation assessed by the Collector from Rs.3,000/- per marla to Rs.65,00/- per marla.

For the public purpose, namely, 'construction of road' the respondents land in question was sought to be acquired by the State in terms of notification issued u/s 4 of the Land Acquisition Act (hereinafter referred to as 'the Act') published on

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[1] **Whether reporters of Local Papers may be allowed to see the judgment?**

27.9.1994. The Collector passed an award dated 28.2.1997 awarding a sum of Rs.3,000/- per marla.

Aggrieved by the same, the land owners filed a Land Reference Petition u/s 18 of the Act, whereby the said amount of Rs.3,000/- stands enhanced to Rs.6,500/- per marla.

In order to prove their case, the land owners got examined Shri Milap Chand (PW-2) who has deposed and proved the sale deed mark 'A' whereby 5 marlas of land have been sold at Rs.30,000/- which comes to Rs.6,000/- per marla. He has further stated that the acquired land is closer to the road having higher value than the sale transaction land. Shri Sant Ram, Lamberdar (PW-3) has also deposed to the same effect. Certified copy of the sale deed Ext.PW-4/A has been proved by Shri Moti Ram (PW-4). Relying upon the testimony of the witnesses, the Court has rightly come to the conclusion that the market value of the acquired land has been grossly valued by the Collector and the claimants are entitled to a sum of Rs.6500/- per marla which is true and fair market value of the acquired land.

I have seen the material on record and am in agreement with the findings returned by the Additional District Judge and see no reason to interfere with the same.

However, in the impugned award, the interest u/s 23(1-A) has been awarded from 1.1.1974 which is the date when the possession of the land was actually taken over by the State for construction of the road.

In view of the ratio of law laid down by the Apex Court in ***Siddappa Vasappa Kuri and another*** v. ***Special Land Acquisition Officer and another*** (2002(1) SCC 142), the finding of the impugned award to this extent needs to be reversed. Accordingly, in the present case, even though the possession of the land was taken on 1.1.1974, however, keeping in view the principles of law laid down by the Apex Court in ***Siddappa Vasappa Kuri*** (supra), the possession for the purpose of adjudicating the compensation u/s 23(1-A) cannot be prior to that of the date of publication/notification u/s 4 which in the present case is 27.9.1994.

The award is accordingly modified to the extent that the land owners shall be entitled to compensation at the rate of Rs.6500/- per marla and for the purposes of determination and calculation of interest and compensation, the date of possession as envisaged u/s 23(1-A), 23(2), 28 & 34 of the Act shall be the date of publication of the notification which is 27.9.1994. The land owners shall be entitled to compensation as aforesaid.

Keeping in view the fact that the respondents have been deprived of the use of their land, in the peculiar facts and circumstances, the State is directed to pay the awarded amount, if not already deposited in this Court, to the respondents within a period of four months from today.

(Sanjay Karol),
Judge.

September 5, 2007
(*rana*)